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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,919	05/29/2007	Thomas E. Hashman	60360-USA	2922

7590 05/10/2011  
John M. Sheehan  
Patent Administrator  
FMC Corporation  
1735 Market Street  
Philadelphia, PA 19103

EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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05/10/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,919	<b>Applicant(s)</b> HASHMAN ET AL.	
	<b>Examiner</b> ALTON PRYOR	<b>Art Unit</b> 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/25/08;10/3/08;11/20/09</u>                                  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The term "cyanobacteria algae" is not defined or described in the specification.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,10-12,16 are rejected under 35 U.S.C. 102(b) as being anticipated by Fourth Seminar of Algae Control Research Group, 2/24/03. The reference teaches the application of pyraflufen-ethyl and halosulfron or ethoxysulfuron to algae and silvery-thread moss (*Bryum argenteum*). See Test nos. 18-19 on page 13, Test nos. 10-19 on page 14, Test nos. 2-4,6 on page 16-17 and Test nos. 2-3 on pages 17 and 18.

Claims 1-5,10,11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Fausey (Controlling Liverwort and Moss now and in the future,

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HortTechnology, American Society for Horticultural Science, January-March 2008, 13(1) pp. 35-38. Fausey teaches the application of flumioxazin, oxyfluorfen and oxadiazon to liverworts (marchantia) and silver thread moss (Bryum argenteum). See Tables 1-4.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,5-9,11-14,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unhoch et al. (USPN 6710017; 3/23/04). Unhoch et al. suggests that halosulfuron-methyl and carfentrazone-ethyl can be combined and placed in a water system to control algae (abstract. column 4 lines 24-62). Unhoch et al. teach that dispersants can be added to the halosulfuron-methyl and carfentrazone-ethyl combination (column 7 lines 33-43). Unhoch et al. do not exemplify an invention comprising halosulfuron-methyl and carfentrazone-ethyl. However, it would have been obvious to make said invention since Unhoch et al. suggest the combination of halosulfuron-methyl and carfentrazone-ethyl.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fourth Seminar of Algae Control Research Group, Fausey or Unhoch et al. as applied to claims above, and further in view of Koehler (Apple Spray Materials Cost per Dose). Fourth Seminar of Algae Control Research Group, Fausey or Unhoch et al.

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teach(es) all that is recited in claims 14 and 15 except for the invention comprising X-77 spreader . However, Koehler teaches that X-77 spreaders can be added to herbicides(page 12). It would have been obvious to modify the invention taught by Fourth Seminar of Algae Control Research Group, Fausey or Unhoch et al. to include the X-77 spreader taught by Koehler. One would have been motivated to do this since a spreader disperses the herbicide to give the herbicide broader coverage.

#### ***Election Status***

The prior art does not teach or suggest controlling *Bryum argenteum* with carfentrazone-ethyl in golfcourses.

#### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616